

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 12, 1999
at 3:15 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Dale Mahlum, Vice Chairman (R)

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 340, 3/12/1999; HB 485,
3/12/1999; HB 486, 3/12/1999
Executive Action: SB 413

EXECUTIVE ACTION ON SB 413

Motion: SEN. KEATING moved that SB 413 DO PASS.

Motion: SEN. KEATING moved that SB 413 AMENDMENTS SB041303.ATE
BE ADOPTED. **EXHIBIT**(nas56a01).

Discussion:

SENATOR KEATING explained the amendments.

SENATOR TAYLOR asked for an overview of SB041303.ate. **Mr. Mitchell** stated the amendments take out the duplicate sections in SB 413 which are duplicated in HB 142.

Vote: Motion that **SB 413 AMENDMENTS SB041303.ATE BE ADOPTED** carried 9-1 with Wilson voting no.

Motion: **SEN. KEATING** moved that **SB 413 AMENDMENTS SB041301.ATE - #1-#7 BE ADOPTED. EXHIBIT(nas56a02).**

Discussion:

SENATOR KEATING explained the amendments. Amendments #8, #9 and #10 are overlaps of the previous amendment and have already been deleted from the bill.

SENATOR COCCHIARELLA questioned amendment #5 for clarification. **SENATOR KEATING** stated the meaning of significantly affect is to determine the affect on a very broad area and that it does not apply to a site specific disturbance within this larger area. All it does is qualify the degree of impact on the quality of the human environment.

SENATOR COCCHIARELLA stated she understood significantly affect words in the bill but, to her, the amendment says that local impacts or anything site specific cannot be considered. **SEN. KEATING** said no, it does not mean you cannot consider it but you cannot call it significantly affecting. In and of itself the affect could have significance as to that specific site. It is just saying the term is very broad. **SEN. COCCHIARELLA** stated then you can only consider something having a significant affect if it is very broad but not site specific? There is a double negative in the sentence making it unclear. **SEN. KEATING** directed her to the body of the law to find how significantly affect is being used and apply it to the specific object of the sentence. **SEN. COCCHIARELLA** stated if she could not understand how the words worked in a definition she would not be able to fit them into the law. She asked **Mr. Mitchell** to explain them to her. **Mr. Mitchell** said the definition of significantly affect on the human environment triggers a lot of decision making through **MEPA**. To clarify what that means is the effort being put forth here. Significant is defined in the model rules. This definition tries to limit it from what it says in the model rules. In this context it is trying to say significantly affect

does not include those impacts which were basically in the definition of proposal for project in the previous definition which has now been stricken. That language has been taken out of proposal for project and put into the definition of significantly affect as to what it does not mean. The difficulty is in the last part of the sentence where significantly affect is defined using the term significantly affect and therefore becomes cumbersome. **SEN. COCCHIARELLA** stated she did not grasp the concept of the amendment. **SEN. KEATING** stated he was trying to say a localized impact area is not within the meaning of significantly affect. **SEN. COCCHIARELLA** stated if there was a huge impact on a local entity or site, we don't care, it is not part of significantly affect. **SEN. KEATING** said no, that is not what it is saying.

SENATOR WILSON stated it seems it only matters if it spreads out beyond the localized area.

SENATOR CRISMORE asked **SEN. GRIMES** to comment. **SEN. GRIMES** stated he did not write the language but understands the intent. The intent is if it is localized, if it is site specific, and does not affect the quality of human environment then an Environmental Impact Statement would not be triggered, an Environmental Assessment would be used. This is just further trying to clarify that language as to when significantly affect would trigger the **EIS**. That would be in cases where it is not localized, not site specific and does not affect the quality of the environment.

SENATOR COCCHIARELLA asked if the intention of the language is to say if it is site specific or localized you do not ever want an **EIS** under this criteria. **SEN. GRIMES** stated if the other definitions do not apply in some other way in this section. If it is just purely localized and site specific, it would be the **EA**.

SENATOR TAYLOR asked for an example. If he owned a logging company and had 100 acres of private ground but there was an accident and the logging mill burns up plus 50 acres of timber. It does not affect the surrounding area because it is his property. That is a local impact. If he had a coal mine in Lewistown where cyanide leached into the water and goes to the neighboring ranchers, they would have to suck the water out of the ground to bring it back up resulting in it drying out the ranchers water, that is site specific and affects the environment. Is that correct? **SEN. KEATING** said it would have to not affect the human environment and the mine example affects the human environment and therefore

would be a significant affect. **Mr. Mitchell** stated a detailed statement is required on projects that affect the quality of the environment. The detailed statement is typically defined as meaning an **EIS** as opposed to an environmental checklist or **EA**. According to **SEN. GRIMES** statement if this proposed action or project does in fact have only a limited localized impact that is site specific and does not significantly affect the quality of the human environment then there is no significant affect and there would not be an **EIS** but instead some other environmental review would be conducted.

SEN. GRIMES offered examples from his local constituents. A discussion was brought about over whether or not an **EIS** or **EA** would be triggered in the case of Golden Sunlight Mine, who basically needed to put a bird net over their settling ponds. It did not affect the environment, it was local and site specific. The overall intent of the bill is to make these things definable and to make sure they are not obstructionist. His constituents agreed, whether they liked the mine or not, that kind of **EIS** for that situation would have been ridiculous.

SENATOR WILSON questioned if currently that would have triggered an **EIS** as things are now? **SEN. GRIMES** stated they are trying to further define and put a fence around the issue. Right now they could allege that virtually anything could be used to say an **EIS** needs to occur.

SENATOR COCCHIARELLA stated she felt it important the committee not only hear what **SEN. GRIMES** says about **EIS/EA** because she does not believe **MEPA** does that. She feels it is important not to mislead everyone that it always happens that way. **SEN. GRIMES** stated he was just using one example and offered his apologies if he was in error.

SENATOR KEATING asked for comment on that definition. **John Bloomquist, Montana Stockgrowers Association**, stated the reason behind the definition is the threshold between an **EA** and **EIS** is a finding of significance. If there are potential significant affects by the action of quality human environment, an **EIS** is triggered, which is a more expansive review of the proposed action. Significance is not defined anywhere in **MEPA**. There are some regulations and considerations regarding significance determination which include issues like localized impact, site specific impacts and duration. He thinks the definition is trying to put some statutory boundaries on significant because that is the trigger, or threshold between an **EA** or a more expansive, time consuming and involved **EIS**.

SENATOR KEATING stated there are double negatives in many parts of our law and it has to be left to the experts in **DEQ** to sort things out and they usually do a good job doing that. In this case of amending **MEPA** in order to give a better definition of the line between an **EIS** and an **EA**, we are trying to define significant affect. The folks in the Department that do the reviews know whether a localized or site specific action is significant in the sense that it requires an **EIS** or an **EA** and, in fact, the Director of the responsible state agency shall make any determination of significance. The staff experts in **DEQ** that make a decision on whether it should be an **EIS** or an **EA** have some guidelines to go by and the Director has the authority for determination of significance. It would allow them to do their job with more clarity and efficiency with it in the statutes.

Substitute Motion: **SEN. COCCHIARELLA** made a substitute motion to **SEGREGATE AMENDMENT #5 FROM SB041301.ATE.**

Vote: Motion that **AMENDMENTS NO. 1,2,3,4,6,7 IN SB041301.ATE BE ADOPTED** carried 10-0.

Vote: Motion **AMENDMENT #5 BE SEGREGATED FROM SB041301.ATE failed 5-5** with **Senators Cocchiarella, McCarthy, Roush, Taylor and Wilson** voting no.

Motion: **SEN. KEATING** moved that **PAGE 2, LINE 15 BE AMENDED TO DELETE "QUANTIFIED" AND RESTORE "UNQUANTIFIED".**

Discussion

SENATOR GROSFIELD stated he did not like either word. If you say "unquantified environmental amenities" and later on talk about "along with economic and technical considerations", the implications are that unquantified does not apply to economic and technical considerations. He feels that is a defect in current law.

Substitute Motion: **SEN. GROSFIELD** made a substitute motion on **PAGE 2, LINE 15, STRIKE "PRESENTLY" AND ON LINE 16 STRIKE "QUANTIFIED".**

Discussion:

SENATOR TAYLOR questioned if that change made any difference and requested an explanation. **Mr. Mitchell** said he did not have a good explanation without further thought. The issue is in trying to identify and consider the values of existing environmental amenities to make sure they are given appropriate consideration

in terms of whatever impacts the project may have on those environmental entities. He is uncertain that "presently" is critical to the rest of the sentence. The words "quantified" and "unquantified" are significant in terms of what environmental entities you have and how they are quantified. By striking both words it does not matter what environmental amenities and values were given appropriate consideration in reviewing a particular project. He did not see that it made a lot of difference.

Vote: Motion carried 9-1 with Wilson voting no.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 40; Comments : None.}

Discussion:

SENATOR CRISMORE questioned if this bill with the amendments makes it more palatable to their organization than it was without the amendments? **Anne Hedges, Montana Environmental Information Center**, stated the amendments do take care of the conflicting and similar language with **HB 142**. **SEN. KEATING'S** amendments were superficial and did not do anything to the substance of the bill. One significant problem was taken care of by deleting "quantified". By changing that word nothing has really been affected, it just means both quantified and unquantified have to be studied if they are an environmental amenity.

They still have some serious concerns with the bill. In the definition section the definitions for "cumulative impact" and "significantly affects" are being changed so they will have significant impact on **MEPA** decisions in the future. With those changes they still strongly oppose the bill.

Motion: **SEN. KEATING** moved that **SB 413 DO PASS AS AMENDED**.

Discussion:

SENATOR TAYLOR referred to **EXHIBIT (nas56a03)** and questioned why **MEIC** would be trying to stall this project? **Ms. Hedges** stated there are a lot of issues including a very old **EIS**, a community feeling that the **EIS** no longer makes sense because of how growth has occurred since that time in this community and where the real needs are for transportation in the community. The needs have changed over the past eight or nine years.

SEN. KEATING stated the article says the letter from **MEIC** criticizes a recent re-evaluation of the **EIS** completed by the Department for lack of public involvement in the process. The

Department evidently did a re-evaluation of the **EIS** and then they say the supplemental **EIS** will not be necessary because the changes in the proposed project, scope and work do not result in any significant environmental impact. Now we are back to "significant environmental impact". The Department is saying the impacts are not significant. **MEIC** is saying they are significant. This is where the confusion comes in. **MEPA** was not definite in its definition of "significant impacts" and now there is a delay on a project for what reason? The experts in the Department have reviewed the **EIS**, re-evaluated it and said it does not need to be changed because, in their eyes, there is no significant environmental impact and their lawyer says they have followed the law. The fight goes on because of a lack of definition in **MEPA**.

SENATOR MCCARTHY stated she did not disagree with what **SEN. KEATING** is saying, she just does not agree with the approach he is taking here. For that reason, she has requested a bill draft that will ask the Environmental Quality Council to study the issue that is the subject of this bill. She feels that is a much more positive way to go about this. She grants **MEPA** needs to be studied and changed. It is a 1971 set of rules and regulations and many things have changed since that time. It needs updating. The bill has gone too far and for that reason she has made the other request.

SENATOR COCCHIARELLA stated this is a situation where if you wish for something you might get it. She feels she might be able to say "I told you so" someday and she hopes it is not to **SEN. GRIMES**. She feels he is creating a bigger nightmare for himself than he could ever imagine. This should not be in front of this committee, this should be an issue of **EQC**.

SENATOR WILSON asked for an explanation of the makeup of **EQC**. He understands it is bipartisan, even to the extent of having co-chairs. Is that correct? **SEN. COCCHIARELLA** stated that was correct. **SEN. WILSON** said it was his contention that in the case of **I-137**, we should not be doing these types of things in this partisan environment. This sort of overhauling of something that has worked quite well over the years does not belong here. **SEN. MCCARTHY** is right, it should be studied and we should not be tearing it apart in this partisan atmosphere.

SENATOR GROSFIELD was amazed at the timing of this article. A motion to delete the retroactive applicability was made during deliberations on **HB 142**. He is glad he voted against it and the reason is in the third paragraph of the article because **HB 142** takes care of this issue. This issue talks about changed

circumstances after the **EIS** is issued. He believes the **MEPA** process is broken and is broken significantly. He feels there are abuses of the process and perhaps this is one of them. He has been troubled by this bill and has tried to work on it. He encouraged it being on the list to hold over to see if some workable definitions could be arrived at. He thinks the definitions are problematic, they leave out too much and he does not feel it is appropriate to say we are not going to consider permitting actions when we are doing cumulative impact analysis. In Section 3 - Performance Bonding. The problem we have now is we have an **EIS** and there is a bid of \$X to do the **EIS**. You go six months and the agency says they need more information and if they don't receive the information they won't grant the permit and the process starts over. The company say OK we will give you more information and more money and this goes on and on for years in some cases. That is ridiculous. This is not going to help that because this says you have to have a performance bond before you come up with an **EIS**. On some of these complex projects you are going to be asked to bond for all kinds of things no one knows about. No one is going to bond these people. It means the agency gets stuck with doing the **EIS**. Are we giving money to the agency to do the **EIS**? Probably not so that will mean they will do a shoddy **EIS** and that will mean we are back in court again, lawsuit after lawsuit because the **EIS** is not a good one. He has tried to figure out definitions along with a number of people in the room and no one has been successful in the short time they have had to come up with them. He is not sure there is another way to do this other than an **EQC** study. He cannot support the bill.

SENATOR TAYLOR stated we are put into a position where we are trying to understand a bill with complications that we cannot get the same answers on from two different attorneys. As a citizen's legislature we need to make a decision, good, bad or indifferent, that is based on limited knowledge. Unfortunately when you have limited knowledge and you don't have the time here to research, you vote no. When he votes no he is not sure he is voting right or that he is solving the problem if he votes no or yes. He could listen to the lobbyists but he still has to make the decisions for his constituents and he has to defend his decision. He feels a study may be the way to go on this issue.

SENATOR CRISMORE stated the question he has to answer when he goes home is "Bill did you do anything that will finally get us a permit where we can have a mine? Did you do anything that would have kept us from being shut down by the environmentalists that we did not get to do when we ran the mine? Did you do anything to keep them from shutting down our timber sales by one appeal after another appeal that we thought we had everything covered

from the beginning?" The timber sale in the Swan has been shut down four times through **MEPA** now to where they have been asked to leave 90,000 feet of timber on the ground to rot. The state sold that sale for \$1.7 million dollars. If the court said today to go ahead and finish it up they might realize \$300,000. Something is wrong with a system that allows that to happen. It has to be fixed and today he hopes we could pass this bill out to provide a start. It could still be studied for two years and come back to it. Venture Star could be stopped under **MEPA**. They will not stay in Montana as long as ASARCO and Miranda to try to get a permit. They are not going to stay here while we stop them as we try to figure out how much accumulative affect there is already with the noise from the Air Force and how much more this will do. We have to change the process otherwise the state is at a standstill.

SENATOR KEATING said the idea of studying **MEPA** is late. **MEPA** has been studied every day of every year since it was instituted. It has been studied by experts out there trying to function under it. It has been studied by experts throughout the state in every industry we have. It has deterred and precluded investment in the state, it has precluded new wealth from being created in this state because we study it so much and do nothing about it. He has a great deal of respect for **SEN. GROSFIELD** in this area and his heart sunk a little when he spoke. He hoped we would have something that would give both sides an opportunity for common sense presentation of their concerns and that knowledgeable people then could make a decision, like mediation or arbitration, and the environment would be protected and new wealth could be created so things could get done. That is where the study of **MEPA** is, it is out there in everyday life by everyone trying to function under this law. He appreciated the Chairman's closing statements.

Motion/Vote: **SEN. COCCHIARELLA** moved that **SB 413 BE TABLED**.
Motion carried 8-3 with Senators Crismore, Cole and Keating voting no by Roll Call Vote.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 30; Comments : None.}

HEARING ON HB 340

Sponsor: **REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON**

Proponents:

Warren Latvala, Park County Land Surveyor

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON, stated **HB 340** is an attempt to preserve corner monuments when activity takes place that would disturb these or take them out. In the process to relocate a corner monument it costs both time and money that would not have to occur if there were some markings made when the monument was removed. He submitted proposed amendments as per **EXHIBIT (nas56a04)**. The Highway Department was concerned about a hefty Fiscal Note and these amendments address their concerns. He referred to **Mr. Mitchell** to explain the amendments.

Mr. Mitchell stated the important part of the amendment HB034001.alk is Amendment #6 which exempts the Department of Highways from the provisions of Section 1(2)(a) and (2)(b) which is basically restoration requirements of the corner monuments.

Proponents' Testimony:

Warren Latvala, Park County Land Surveyor, stated the State of Montana, through its laws, has recognized the value and importance of survey monuments that identify the boundary of all private property in the state. There is nothing in state law that says when a survey monument is set at the corner of a property that a neighbor cannot come by with their bulldozer two hours later and tear that monument out. This frequently happens. It can be to a surveyor's benefit to let it happen because it can be very expensive to replace the monuments but it is not right. He urges the committee's support on the bill.

{Tape : 1; Side : B; Approx. Time Counter : 30 - 36.6; Comments : None.}

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SENATOR COLE stated no one would purposely destroy a corner marker so how will this guarantee there is a survey put in there before the marker is destroyed? **Mr. Latvala** said the intent of the bill is not to require that people engage a surveyor every time they are going to do some work. The intent is they will

locate the monuments and be careful they do not destroy them.

SEN. COLE asked if the landowner could go out and mark the corners before starting up his bulldozer? **Mr. Latvala** said if they know where the monument is and mark it and are careful when they pass by with their bulldozer, they would not come under the provisions of this bill.

SENATOR TAYLOR said if he destroyed the monument the penalty would be he would have to replace it, correct? **Mr. Latvala** said he was not an attorney but he thought any court of law would say if you destroyed it you have to replace it. **SEN. TAYLOR** asked if he used digital survey equipment to locate corners and monuments and how long does it take to locate a monument? **Mr. Latvala** stated he had used that equipment and if the monument has been previously located by that means he could probably locate it within half an hour. If it has not been previously located by that means or is an old subdivision done 15 years ago, there is no geodetic value for that monument so the only way to find the monument is to the recover the boundary of the subdivision and locate it from that plat.

SENATOR CRISMORE stated in his area there are times when a corner might be destroyed for the time being and has to be referenced back? **Mr. Latvala** stated that is the intent of the bill. If a surveyor is called prior to running the bulldozer through the corner, a crew could set references in half an hour and then can come back after the work is completed and in another half hour they can reset the monument. If that is not done first, it could take a crew a week to determine where the monument was.

SENATOR ROUSH asked how this applied to large farm acreages and the pipelines in Northern Montana? **Mr. Latvala** stated he has done some of the pipelines in Northern Montana and has gone for up to six miles without finding a section corner. A case can be made that if you owned four sections of land, the section corner in the center of the property would be strictly your corner. You may be the only person that adjoins it but it may control other people's property boundaries. Montana State law already has the Certified Corner Recordation Act but it applies only to surveyors, it does not apply to anyone else.

SENATOR KEATING questioned the penalty if someone does not engage a licensed surveyor? **REP. ANDERSON** stated the penalty, as he sees it, is if it is a monument that is solely within your property and no one is going to care about it, you would be the one to ultimately get that marked if you were going to do something so you would only have damaged yourself. If you did that and someone else complained about it, there would be no penalty other than you would have to pay a surveyor to put that

monument back in if they could prove you were the one to disturb it. There is no penalty other than specific performance.

Closing by Sponsor:

REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON, stated this is a heads up bill to let those know that if monuments are removed to look before they leap or it will cost more money to re-survey to find those monuments than if they just simply marked them in the first place. It is a double edged sword. If you are doing something that will affect your neighbor he feels the neighbor deserves to have you remark that so there is not a dispute as to where that boundary lies.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 8.4; Comments : None.}

HEARING ON HB 485

Sponsor: **REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON**

Proponents:

Cary Hegreberg, Montana Wood Products Association
Keith Olson, Executive Director, Montana Logging Association
Joe Lamson, Representing Nancy Keenan, Office of Public
Instruction
Joe Kerwin, Deputy Secretary of State, Representing Mike Cooney
as Land Board Member

Opponents:

Janet Ellis, Montana Audubon Society
Denise Roth Barber, Montana Sierra Club

Opening Statement by Sponsor:

REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON, stated the bill addresses the new trend of buying timber conservation licenses in lieu of timber sales on State Trust Lands. It sets some parameters to put those conservation licenses on equal footing with timber sales in the bid process so the state trust is rewarded amply for whatever decision the Land Board chooses to take. **EXHIBIT(nas56a05)**.

Proponents' Testimony:

Cary Hegreberg, Montana Wood Products Association, stated this bill simply asks for equity, fairness and fiduciary responsibility. They understand the Board of Land Commissioners has the ability, the right and the obligation to look at conservation licenses in lieu of timber sales. They expect this to be a viable option for the Land Board to entertain in the future. They simply want an equitable process for determining the value and giving their members the opportunity to bid on that timber that has been prepared through an **EIS** or **EA** that would be coming before the Land Board. They are asking the legislature to set some parameters in place for the Land Board to use when negotiating these conservation licenses in lieu of timber sales.

Keith Olson, Executive Director, Montana Logging Association, stated because our population is expanding under a fixed land base, resource conflicts will forever demand our attention. We seem to be missing a system for equitable resolution. We usually like to let the market place allocate scarce resources, not so much because it is a perfect solution, but because there is no superior solution. For the market place to do its magic, however, there must be competition and that is a key provision of the bill. They would prefer to see state trust lands managed for long term with sustainable harvest. They recognize and appreciate the merit of competing interests. Competing interests should not simply be a ploy to frustrate state land management rather they must also promise responsible stewardship and an equitable return on investment of the beneficiaries of state lands. They feel this bill goes a long way toward a resource solution and urge the committee's concurrence.

Joe Lamson, Representing Nancy Keenan, Office of Public Instruction, spoke in support of the bill. The notion of conservation licenses for state timber sale trust lands is a relatively new area. This bill does start to codify the Land Board's most current approach on that so people are clear that the Land Board, when making the decisions on these timber lands, are trying to improve the resources, i.e. water quality, roads, etc. This is a good area that gives the Board some authority for the things they have already been doing with the Department through policy and they urge passage.

Joe Kerwin, Deputy Secretary of State, Representing Mike Cooney as Land Board Member, spoke in support of the bill. It is a good approach, well reasoned and equitable. It is a new issue brought before the Land Board which will allow the Land Board to proceed. It will allow those who are interested in either the timber sale or purchasing the timber conservation license, how they need to

approach. It sets up common sense procedures for all involved, not only for the sale, but also if they do get the conservation license how they will proceed.

Opponents' Testimony:

Janet Ellis, Montana Audubon Society, stated one of the things they would like to see out of this process is a level playing field for the conservation licenses. They feel the bill tilts a little in favor of the timber bids vs. conservation licenses bids and is the reason for their opposition. They feel this is a bit rigid for some of the situations where this has been applied in the field and it seems if **DNRC** was asked to include this on a routine basis as an option, it would make things easier for conservation license people.

Denise Roth Barber, Montana Sierra Club, feels the bill does not favor timber conservation licenses to the degree they would like to see it.

Questions from Committee Members and Responses:

SENATOR TAYLOR wondered how the value was established on the "Two Crow" sale? **Bud Clinch, Director, Department of Natural Resources and Conservation** stated there is a long history on "Two Crow". Concerned citizens were involved for months through the **MEPA** process and they included a wide variety of comments which were included. They modified the sale as they went through and when it came before the Land Board they opposed it. It was at the Land Board when they were faced with the dilemma of the Land Board approving a sale when they said maybe they could purchase a conservation easement. They deferred acting on that sale for a month while a proposal was developed, on behalf of those people, with a price tag. They then went back to see if they could raise the money.

How the conservation license concepts works is when an applicant proposes to defer a certain portion of a sale. They calculate the volume of timber that is being removed currently using the estimated sale price it might sell for based on what they know is happening in the market price. If they know the timber is selling for \$200 per 1000, they calculate how much timber is going to be lost in the timber sale as a result, multiply it out to arrive at the full value of the timber being deferred. Because they are purchasing is a ten year deferral, they then take the cumulative value and calculate the lost interest income. If they had sold under the estimated appraisal value, how much

money would they lose in interest. That is how price is determined. They come up with a total price, divide it out by a 10 year increment, establish yearly payments and then require they are bonded. They do not want to be caught in the condition where they pay their first year's rent and the logging job is gone.

SEN. TAYLOR asked how much is "Two Crow"? How much did they buy? **Mr. Clinch** said they purchased a 15 year deferral on 14 acres of an irregular stretch going through there. The calculation on the appraised price ended up being \$518 per year for 15 years rental.

SENATOR COLE questioned if once there was a sale and someone wants a conservation license, can they pick and choose what they want to pick out? **Mr. Clinch** stated it has happened a little haphazardly so far. They have issued three licenses in the last ten years. The first one was a 20 acre, 10 year deferral for a total of \$7000. The second one was a different methodology. There was not a timber sale proposed but a wealthy private landowner who lived adjacent to State Land approached them about buying a conservation easement to prevent harvesting the tract adjacent to them. In that case it was a 50 acre, 10 year deferral and that was the first time they started developing a methodology of how to calculate that. The third one was "Two Crow". The intent of the bill is to bring some consistency and fairness to the process. **SEN. COLE** questioned if they had prepared a timber sale, could someone come in and say they want to take out a certain piece for a conservation license? Would that completely change the whole system of what they have to sell for harvest and what is under conservation license? Does that cost more to administer? **Mr. Clinch** stated when they think about doing a timber sale it takes about 24 months to get through the process. If someone proposes a deferral of a portion of the sale it could make the whole rest of the timber sale basically uneconomical. The cost of administration could be less or more. The return to the trust will fluctuate the most.

SENATOR KEATING questioned the age of the timber in the previous example? **Mr. Clinch** stated he was not sure but did not have any reason to believe it is any different than the other age of the general stand which is 100+ years of age. It is mature timber and merchantable. **SEN. KEATING** asked at what point does it become too mature and susceptible to rot and beetles, etc.? **Mr. Clinch** said each stand varies. Timber for the most part lives a long time. It has been their preference in the past to add provisions into the conservation licenses that if some sort of catastrophic event occurs like a fire, they would reserve the right to do salvage there. **SEN. KEATING** asked if they had the right to refuse a conservation license and go ahead and cut the

timber they want to cut? **Mr. Clinch** stated the discretion is within the Land Board now.

SENATOR CRISMORE questioned at the end of the ten years do they have to renew their lease or could one proceed with a timber sale at that point or other management? **Mr. Clinch** stated at the end of ten years, the restrictions would be removed and hopefully they would be renegotiating them. If this was a 10 - 15 acre deferral within a larger block area that was harvested, the likeliness of coming back and having a commercial operation at the end of ten years is not likely.

Closing by Sponsor:

REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON, stated he closed.

{Tape : 2; Side : A; Approx. Time Counter : 8.4 - 41; Comments : None.}

HEARING ON HB 486

Sponsor: **REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON**

Proponents:

Steve Wade, Pacific Steel and Recycling

**Leo Berry, Burlington Northern and Santa Fe Railway Company
and Rhodia, Inc.**

**Denise Mills, Remediation Division Administration, Department of
Environmental Quality**

Don Allen, Western Environmental Trade Association

Opponents:

Anne Hedges, Montana Environmental Information Center

Opening Statement by Sponsor:

REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON, stated **HB 486** addresses some cleaning up in the **Comprehensive Environmental Cleanup and Responsibility Act (CECRA)**. He referred to an amendment from **REP. BOOKOUT REINICKE**. He visited with her about the amendment and she decided not to pursue it so he hoped the committee would pass the bill unamended.

Proponents' Testimony:

Steve Wade, Pacific Steel and Recycling, spoke in support of **HB 486**. This bill does basically two things: 1) It removes the sunset provision currently in the voluntary cleanup act which allows property owners to clean up sites with **DEQ** oversight and get approval in a quicker and more cost efficient manner. 2) It inserts a definition of institutional controls into **CECRA**. The definition is required because they are seeking enforceability for institutional controls which are mechanisms to restrict use and access to property.

Leo Berry, Burlington Northern and Santa Fe Railway Company and Rhodia, Inc., spoke in support of **HB 486** as per **EXHIBIT (nas56a06)**.

Denise Mills, Remediation Division Administration, Department of Environmental Quality, spoke in support of the bill as per **EXHIBIT (nas56a07)**.

Don Allen, Western Environmental Trade Association, spoke in support of the bill. Over the past several years he has participated in a mixed interest group of people who have been involved in looking at the whole **CECRA** issue. The key word is to provide another option. The bill does that and he hopes the committee will look on it favorably.

Opponents' Testimony:

Anne Hedges, Montana Environmental Information Center, stated this bill needs a number of amendments to make it acceptable. The definition of institutional control in this bill is different than existing federal law. She recommends amending this bill to include the language on institutional controls found in **HB 331**. She referred to Page 11, line 29 of the bill and page 4, line 14 indicating there is a redundant section which says you must consider institutional controls giving due consideration to institutional controls. She feels it is sloppy and does nothing for the bill.

Her biggest concern has to do with the orphan share fund. When the fund was established it was meant to be a fund of last resort intended to be used for on the ground cleanup. This bill says this money will not be earmarked just for cleanup. She referred to page 3, line 17 where it says "unless affiliated by stock ownership". This says some people can be considered orphan share even though they have some type of financial interest in that property. On page 13, line 27 with the definition of orphan

share and taking the stock ownership language, it says no one would have to go after an insurance company. She is concerned the orphan share account will be depleted and no cleanup will have occurred. She encouraged the committee to not concur with the bill.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON, stated **Ms. Hedges** raised a number of issues that deserved a response. He did not sign the fiscal note because he was not sure that it was totally accurate. He did not think there was enough information to support it. This bill makes good sense as far as the institutional control. There was quite a long discussion on the House Floor and in the House Natural Resources Committee regarding institutional control. As a property owner you have a strong incentive to remove those institutional controls so the property is more marketable.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 27.1; Comments : None.}

ADJOURNMENT

Adjournment: 5:50 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas56aad)